

SMILEY WANG-EKVALL, LLP  
3200 Park Center Drive, Suite 250  
Costa Mesa, California 92626  
Tel 714 445-1000 • Fax 714 445-1002

**SMILEY WANG-EKVALL, LLP**

Kyra E. Andrassy, State Bar No. 207959

*kandrassy@swelawfirm.com*

Sharon Oh-Kubisch, State Bar No. 197573

*sokubisch@swelawfirm.com*

Michael L. Simon, State Bar No. 300822

*msimon@swelawfirm.com*

3200 Park Center Drive, Suite 250

Costa Mesa, California 92626

Telephone: 714-445-1000

Facsimile: 714-445-1002

Attorneys for Robert P. Mosier,  
Receiver

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

ROBERT P. MOSIER, Federal  
Equity Receiver for the Church for  
the Healthy Self aka CHS Trust,  
CHS Asset Management, Inc., and  
iCare Financial Solution, Inc.,

Plaintiff,

v.

IGOR RUBCHINSKY, an individual;  
RUBCHINSKY LLC, an Illinois  
limited liability company, and  
BROWN WHITE & OSBORN, LLP,  
a California limited liability  
partnership,

Defendants.

Case No.

**COMPLAINT FOR:**

- 1) AVOIDANCE AND RECOVERY  
OF FRAUDULENT TRANSFERS  
PURSUANT TO CALIFORNIA  
CIVIL CODE SECTION  
3439.04(A)(1));**
- 2) AVOIDANCE AND RECOVERY  
OF FRAUDULENT TRANSFERS  
PURSUANT TO CALIFORNIA  
CIVIL CODE SECTION  
3439.04(A)(2));**
- 3) AVOIDANCE AND RECOVERY  
OF FRAUDULENT TRANSFERS  
PURSUANT TO CALIFORNIA  
CIVIL CODE SECTION 3439.05;  
AND**
- 4) DECLARATORY RELIEF**

Plaintiff Robert P. Mosier, in his capacity as the federal equity receiver  
("Receiver") for The Church for the Healthy Self a/k/a CHS Trust ("CHS"),  
CHS Asset Management, Inc. ("CAM"), and iCare Financial Solution, Inc.

SMILEY WANG-EKVALL, LLP  
 3200 Park Center Drive, Suite 250  
 Costa Mesa, California 92626  
 Tel 714 445-1000 • Fax 714 445-1002

1 ("iCare" and, together with CHS and CAM, the "Receivership Entities"),  
 2 alleges as follows:

### 4 **I. INTRODUCTION**

5 1. Beginning in or about September 2014 and continuing to on or  
 6 about March 13, 2019, Defendants Kent R.E. Whitney ("Whitney"), Ngoc Ha  
 7 T. Nguyen ("Ha Nguyen"), and David Lee Parrish ("Parrish") (collectively, the  
 8 "Individual Defendants" and, together with the Receivership Entities, the  
 9 "Receivership Defendants") utilized the Receivership Entities to orchestrate  
 10 at least a \$33 million Ponzi scheme that primarily targeted the Vietnamese  
 11 communities of Orange County and San Jose, California.

12 2. The vast majority of the funds that were raised were  
 13 misappropriated by Whitney, Parrish and Ha Nguyen, who spent many  
 14 millions of dollars of investor funds on personal expenses for themselves  
 15 and for family members and friends. What they did not spend on personal  
 16 expenses was used to make Ponzi payments to investors. This action is  
 17 being brought to recover funds that the Receiver alleges were fraudulently  
 18 transferred to or for the benefit of the Defendants.

### 20 **II. JURISDICTION AND VENUE**

21 3. On March 13, 2019, the Securities and Exchange Commission  
 22 filed a civil enforcement action against CHS, CAM, Whitney and Parrish,  
 23 initiating case number 8:19-cv-00499 (the "SEC Action"). By order entered  
 24 on March 14, 2019, the Court appointed the Receiver over CHS and CAM,  
 25 and the assets of Whitney and Parrish.

26 4. This Court has jurisdiction over this action pursuant to 28 USC §  
 27 1367 because this action is ancillary to the SEC Action, and the receivership  
 28

1 is pending before this Court. *See Donell v. Kowell*, 533 F.3d 762, 769 (9th  
2 Cir. 2008).

3 5. This action involves the same series of transactions as the SEC  
4 Action.

5 6. Venue is proper in this district because this action is ancillary to  
6 the SEC Action and the receivership remains pending before this Court.

### 7 8 **III. THE PARTIES**

9 7. The Receiver is the duly appointed and acting federal equity  
10 receiver of the Receivership Entities.

11 8. On information and belief, defendant Igor Rubchinsky  
12 ("Rubchinsky"), at all times herein was and is an individual residing in the  
13 State of New York, County of Kings.

14 9. On information and belief, defendant Rubchinsky LLC at all times  
15 herein was and is licensed as an Illinois limited liability company. Its  
16 principal place of business is believed to be 740 W Fulton St., Apt. 1007,  
17 Chicago, IL 60661-0000.

18 10. On information and belief, defendant Brown White & Osborn  
19 LLP ("BWO"), is a California limited liability partnership. Its principal place of  
20 business is 333 South Hope Street, 4th Floor, Los Angeles, CA 90071.

### 21 22 **IV. GENERAL ALLEGATIONS**

#### 23 **A. The SEC Action**

24 11. On March 13, 2019, the SEC filed its original complaint against  
25 CHS, CAM, Whitney, and Parrish ("SEC Complaint"), accompanied by an *Ex*  
26 *Parte Application for a Temporary Restraining Order and Orders (1)*  
27 *Freezing Assets; (2) Prohibiting the Destruction of Documents; (3) Granting*  
28 *Expedited Discovery; (4) Requiring Defendants to Surrender Passports; and*

SMILEY WANG-EKVALL, LLP  
 3200 Park Center Drive, Suite 250  
 Costa Mesa, California 92626  
 Tel 714 445-1000 • Fax 714 445-1002

(4) *Requiring Accountings* that, among other things, ordered the defendants to show cause why a preliminary injunction should not be granted.

12. The SEC Complaint alleged that the defendants (1) committed fraud in violation of the anti-fraud provisions of the federal securities laws, specifically Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

13. On March 14, 2019, the District Court entered an *Order Appointing Receiver* in which it appointed the Receiver over CHS and CAM, and the assets of Whitney and Parrish, and gave the Receiver authority to take custody, control, and possession of all Receivership Property, which included all monies and funds that the Receivership Defendants owned, possessed, had a beneficial interest in, or controlled directly or indirectly.

14. On September 11, 2019, the SEC amended its original Complaint to add iCare and Ha Nguyen as defendants and to add relief defendants. On September 12, 2019, the District Court entered an amended order (1) expanding the Receivership Order in the SEC Action to include Ha Nguyen and iCare, and (2) freezing assets and requiring Ha Nguyen and iCare to provide an accounting.

15. In connection with the Receiver's motion to make an interim distribution to investors in the Receivership Entities, the Court granted the Receiver's motion to impose a constructive trust over all assets of the Receivership Estates for the sole benefit of the defrauded investors, to the exclusion of all creditors.

16. On June 8, 2021, the District Court entered an order in the SEC Action authorizing the Receiver to pursue fraudulent transfer actions.

SMILEY WANG-EKVALL, LLP  
 3200 Park Center Drive, Suite 250  
 Costa Mesa, California 92626  
 Tel 714 445-1000 • Fax 714 445-1002

**B. Whitney's Plea Agreement with the United States Attorney's Office**

17. On March 18, 2020, Whitney entered into a plea agreement with the United States Attorney's Office through which he admitted to engaging in a scheme to defraud investors through CHS Trust and related entities, to obtain money or property through false promises or statements, and acting with the intent to defraud. In that plea agreement, Whitney admitted that he was, in fact, guilty of two counts including mail fraud, in violation of Title 18, United States Code, Section 1341, and filing false tax returns for the years 2017 and 2018, in violation of Title 26, United States Code, Section 7206(1).

**C. The Fraudulent History of Whitney**

18. Whitney was a fraudster long before he became a pastor and founded the CHS and related entities to perpetrate the Ponzi scheme. On August 29, 2003, Whitney was registered with the Commodity Futures Trading Commission ("CFTC") as a floor broker. From May 2008 through April 2010, Whitney engaged in a scheme to avoid posting more than \$96 million of margin calls when placing orders for commodity options traded on the New York Mercantile Exchange and the Chicago Mercantile Exchange. The CFTC sued Whitney on December 10, 2010, and obtained a consent order against him on May 22, 2012, permanently barring him from the commodities industry and imposing a \$600,000 civil penalty.

19. In September 2011, Whitney pled guilty to one count of wire fraud in connection with the margin call fraud scheme. *See United States v. Whitney*, Case No. 1:11-cr-108 (N.D. Ill. [Eastern Div.]). As part of his scheme, he obtained more than \$600,000 from approximately 10 investors for a purported commodity pool investment and for trading in futures accounts to be held jointly between Whitney and the investors. He misrepresented the use of investor funds, investor returns, and the

SMILEY WANG-EKVALL, LLP  
 3200 Park Center Drive, Suite 250  
 Costa Mesa, California 92626  
 Tel 714 445-1000 • Fax 714 445-1002

1 investment's risk. Whitney misappropriated most of the money he received,  
 2 generated bogus account statements, and made Ponzi payments. On  
 3 December 8, 2011, Whitney was sentenced to 44 months imprisonment.  
 4 Whitney was released from federal custody in June 2014, after serving  
 5 approximately 30 months.

6 **D. The Operation of CHS**

7 20. Within two months of being released from prison, Whitney  
 8 became an ordained minister through an on-line program in August 2014.

9 21. A month later, Whitney formed CHS, purportedly as a nonprofit,  
 10 religious organization. Whitney, Parrish, and Ha Nguyen (together, the  
 11 Receivership Entities and Individual Defendants are referred to as the  
 12 "Receivership Defendants"), and others acting at their direction used the  
 13 internet, radio and television, as well as in-person meetings and brochures,  
 14 to lure investors into a fraudulent investment scheme primarily targeting the  
 15 Vietnamese communities in Orange County and San Jose, California. Its  
 16 websites provided the façade of a "virtual church". Recordings of these  
 17 appearances were often uploaded to YouTube, but it did not hold religious  
 18 services typically associated with churches. The primary mission of CHS  
 19 was obtaining investor funds.

20 22. In these appearances, CHS representatives, at the direction of  
 21 Whitney, made the following claims: (1) that CHS Trust, the investment arm  
 22 of CHS, guaranteed an annual rate of return of 12%; (2) guaranteed return  
 23 of principal with no risk because the investments were backed by the FDIC  
 24 and SIPC (Securities Investor Protection Program); (3) that in the past five  
 25 years the worst return CHS realized was a 1.5% profit for the month of  
 26 January 2015; (5) that the traders used by CHS had not lost money in 15  
 27 years; and (6) that CHS was audited by KPMG. At the time these  
 28 statements were made, Whitney knew the statements were false or

SMILEY WANG-EKVALL, LLP  
3200 Park Center Drive, Suite 250  
Costa Mesa, California 92626  
Tel 714 445-1000 • Fax 714 445-1002

1 misleading. CHS did not produce a 12% annual return; despite millions of  
2 dollars deposited from CHS investors, little investor money went into any  
3 trading accounts in 2018; CAM was not formed until 2017, thus the  
4 statements regarding the investment performance over the past five years  
5 and fifteen years were misleading; and CHS was not audited by KPMG.

6 23. At the direction of the Individual Defendants and others  
7 (depending upon which salesperson the investor had spoken to) and relying  
8 upon these false statements, investors wrote checks or gave cash to CHS or  
9 iCare, and rolled over retirement, investment, or college savings assets to  
10 CAM bank accounts where the funds were commingled and then transferred  
11 to CHS.

12 24. As part of the scheme, Whitney directed that monthly statements  
13 be sent to victims that contained false reports of investment returns.  
14 Whitney intended to lull victims into believing their money had been invested  
15 and was consistent with the false claims made by CHS representatives.

16 25. The vast majority of investor funds that were deposited into  
17 CHS's bank account were misappropriated by the Receivership Defendants,  
18 who enriched themselves and used investor funds to finance their lifestyle,  
19 including paying for vacations, expensive meals out, and designer clothes  
20 for themselves and for their friends. The Receivership Entities also used  
21 approximately \$11 million in Ponzi-type payments to older investors, taken  
22 from money brought in by new investors. What little was invested was lost  
23 in the market.

24 26. Between May 2, 2015 and March 13, 2019, the Receivership  
25 Entities raised approximately \$33 million from investors.

26 27. The Receivership Defendants misappropriated or dissipated the  
27 vast majority of the roughly \$33 million raised from investors, except for the  
28 over \$5 million that was seized just before the filing of the SEC Action.



SMILEY WANG-EKVALL, LLP  
3200 Park Center Drive, Suite 250  
Costa Mesa, California 92626  
Tel 714 445-1000 • Fax 714 445-1002

1 CHS returned approximately \$12.8 million of the amount raised to investors  
2 through Ponzi payments or by making payments to creditors on their behalf

3 **E. Defendants**

4 28. On or about October 29, 2018, CHS wrote a check payable to  
5 Defendant Rubchinsky LLC totaling \$100,000.00 with the word "Donation" in  
6 the memo line. The check cleared CHS's bank on or about December 7,  
7 2018. This transfer was made through its checking account held in the  
8 name of CHS at Prestige Community Credit Union ("Check Transfer"). A  
9 copy of this check is attached hereto and incorporated herein as Exhibit "A."

10 29. On information and belief, the Receiver alleges that several  
11 months later, Rubchinsky loaned Whitney \$50,000.00. The loan agreement,  
12 a copy of which is attached hereto and incorporated herein as Exhibit "B,"  
13 does not state the purpose of the loan and provides that the loan does not  
14 accrue interest payments and is to be repaid when Whitney is financially  
15 stable or March 13, 2021, with payments due every thirty days until the loan  
16 is repaid, although the note does not specify the amount of the monthly  
17 payments. Once the loan was funded, Whitney held legal and equitable title  
18 to the \$50,000.00. The Receiver is informed and believes and based  
19 thereon alleges that Whitney used the \$50,000.00 in loan proceeds to fund a  
20 \$50,000.00 retainer with BWO to represent him in connection with the SEC  
21 Action and related investigations. The Receiver is further informed and  
22 believes that the fees incurred by BWO as of the date of *Order Appointing*  
23 *Receiver* are less than \$50,000. The Receiver made demand upon BWO for  
24 turnover of the retainer, but counsel for Rubchinsky objected to that request.  
25 The Receiver is informed that BWO remains in possession of the funds.

26 30. Given that the Receivership Entities were operating an  
27 investment fraud with no legitimate business in violation of securities laws,  
28 the Receiver is informed and believes that no legitimate services were



1 provided by Rubchinsky LLC to the Receivership Entities in exchange for the  
2 Check Transfer.

3 31. Pursuant to the *Order Appointing Receiver* and given the  
4 imposition of a constructive trust over all assets of the Receivership Estates  
5 for the sole benefit of defrauded investors, the Receiver alleges that the  
6 funds being held by BWO are funds in which Whitney holds a legal and  
7 equitable interest and that are therefore property of the receivership estates  
8 available solely for the benefit of defrauded investors.

### 10 **FIRST CLAIM FOR RELIEF**

#### 11 **(For Avoidance and Recovery of Fraudulent Transfers Pursuant to** 12 **California Civil Code Section 3439.04(a)(1))** 13 **(Against Rubchinsky LLC)**

14 32. The Receiver realleges and incorporates by this reference  
15 paragraphs 1 through 31, above, as though set forth herein in full.

16 33. During the four calendar years prior to the Receiver's  
17 appointment, a payment of \$100,000.00 was made to or for the benefit of  
18 Defendant Rubchinsky LLC.

19 34. The Check Transfer was made with the actual intent to hinder,  
20 delay or defraud CHS's creditors.

21 35. The Check Transfer is avoidable by the Receiver under  
22 applicable law, including California Civil Code Section 3439.04(a)(1).

23 36. The Receiver is entitled to a recovery against Rubchinsky LLC in  
24 the sum of \$100,000.00, with interest thereon at the legal rate.

25 ///

26 ///

27 ///

28

**SECOND CLAIM FOR RELIEF**

**(For Avoidance and Recovery of Fraudulent Transfers Pursuant to  
California Civil Code Section 3439.04(a)(2))  
(Against Rubchinsky LLC)**

37. The Receiver realleges and incorporates by this reference paragraphs 1 through 31, above, as though set forth herein in full.

38. CHS did not receive reasonably equivalent value in exchange for the Check Transfer.

39. At the time the Check Transfer was made by CHS, CHS was engaged in a business or a transaction for which its remaining assets were unreasonably small in relation to the business or transaction.

40. At the time CHS made the Check Transfer, CHS intended to incur, or believed or reasonably should have believed that it would incur debts beyond its ability to pay as such debts became due.

41. The Check Transfer is avoidable by the Receiver under applicable law, including California Civil Code Section 3439.04(a)(2).

42. The Receiver is entitled to recovery against Rubchinsky LLC in the amount of \$100,000.00, with interest thereon at the legal rate.

**THIRD CLAIM FOR RELIEF**

**(For Avoidance and Recovery of Fraudulent Transfers Pursuant to  
California Civil Code Section 3439.05)  
(Against Rubchinsky LLC)**

44. The Receiver realleges and incorporates by this reference paragraphs 1 through 31, above, as though set forth herein in full.

45. CHS currently has creditors whose claims arose before the Check Transfer was made.

1 46. CHS received less than reasonably equivalent value in exchange  
2 for the Check Transfer.

3 47. At the time of the Check Transfer, CHS was insolvent.

4 48. The Check Transfer is avoidable by the Receiver under  
5 applicable law, including California Civil Code Section 3439.05.

6 49. The Receiver is entitled to recovery against Rubchinsky LLC in  
7 the amount of \$100,000.00, with interest thereon at the legal rate.

8  
9 **FOURTH CLAIM FOR RELIEF**

10 **(For Declaratory Relief)**

11 **(Against BWO and Rubchinsky)**

12 50. The Receiver realleges and incorporates by this reference  
13 paragraphs 1 through 31, above, as though set forth herein in full.

14 51. The Retainer is an interest of Whitney in property that is property  
15 of the Receivership Estate as set forth in the *Order Appointing Receiver*.  
16 The Receiver is informed that BWO is willing to turn the Retainer over to the  
17 Receiver but Rubchinsky has objected to it doing so, claiming that he is  
18 instead entitled to the Retainer because it was allegedly funded with  
19 proceeds of its loan to Whitney.

20 52. Accordingly, there is a dispute regarding ownership of the  
21 Retainer, and the Receiver requests a judicial determination that the  
22 Retainer is property of the receivership estate.

23  
24 **PRAYER**

25 WHEREFORE, the Receiver prays as follows:

26 1. For judgment against Rubchinsky LLC in the sum of  
27 \$100,000.00;

28 2. For interest at the legal rate from the date of the Check Transfer;

- 1           3.     For a declaratory judgment that the Retainer is property of the  
2 receivership estate and an order directing its turnover to the Receiver;  
3           4.     For costs of suit; and  
4           5.     For such other and further relief as the Court deems appropriate.  
5

6 DATED: October 28, 2022           SMILEY WANG-EKVALL, LLP  
7  
8

9   By:           /s/ Kyra E. Andrassy            
10    KYRA E. ANDRASSY  
11    Attorneys for Robert P. Mosier,  
12    Receiver  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SMILEY WANG-EKVALL, LLP  
3200 Park Center Drive, Suite 250  
Costa Mesa, California 92626  
Tel 714 445-1000 • Fax 714 445-1002

# EXHIBIT "A"

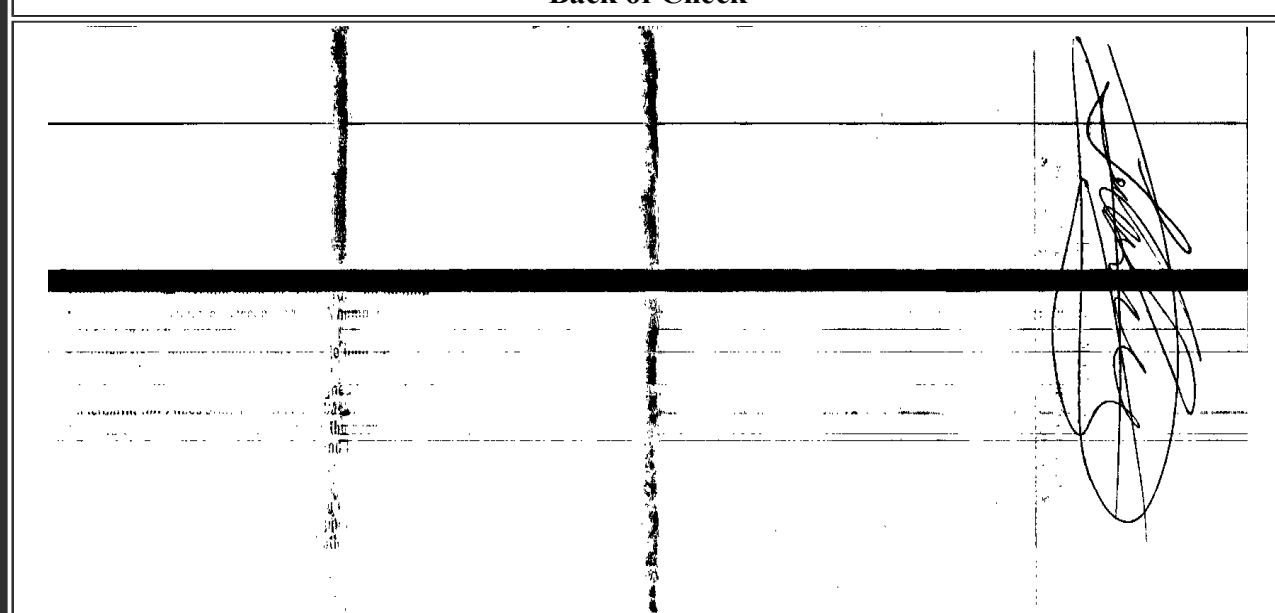
Image of 181640

Close

Print

CHURCH FOR THE HEALTHY SELF PRAY TODAY AND EVERDAY 3131 MCKINNEY AVE. SUITE 600 DALLAS, TX 75204		Prestige Community CU Dallas, Texas 95240 32-8031/3110 32-8031/3110	181640
PAY TO THE ORDER OF Rubchinsky LLC		\$ **100,000.00	10/29/2018
One Hundred Thousand and 00/100*****		DOLLARS	
Rubchinsky LLC			
MEMO	Donation	<i>Kelly E. Flank</i> AUTHORIZED SIGNATURE	Photo Safe Deposit Details on Back
# 181640#		# 311080311#	0000095803#

**Back of Check**



# EXHIBIT "B"



## PERSONAL LOAN AGREEMENT

**Loan Amount:** Fifty Thousand Dollars (\$50,000.00)

**Date:** March 13, 2019

**I. THE PARTIES.** For the above value received by Kent Whitney with a mailing address of 1143 Hester Ave., City of San Jose, State of California, (the "Borrower"), agrees to pay Igor Rubchinsky with a mailing address of 740 W. Fulton Apt. 1007, the City of Chicago, State of Illinois, (the "Lender").

a. Personal Relation. The Borrower is the Friend to the Lender.

**II. PAYMENT.** This agreement, (the "Note"), shall be due and payable, including the principal and any accrued interest, in one of the following ways:

☐ Once per week beginning on \_\_\_\_\_, 20\_\_\_\_ and to continue every seven (7) days until the balance is paid.

☐ Once per month beginning on \_\_\_\_\_, 20\_\_\_\_ and payment is due every thirty (30) days until the balance is paid.

Other Loan to be repaid when Kent Whitney is financially stable and/or whichever comes first loan repayment to begin on March 13, 2021 and payment is due every thirty (30) days until the balance is paid.

All payments made by the Borrower are to be applied first (1<sup>st</sup>) to any accrued interest and then to the principal balance. The total amount of the loan shall be due and payable on the \_\_\_\_ 31st day of December, 2021.

**III. INTEREST.** The Note shall

Bear interest at a rate of 0.00 percent (0.00 %) compounded annually. The rate must be equal to or less than the usury rate in the State of the Borrower.

Not bear interest.

**IV. PREPAYMENT.** The Borrower has the right to pay back the loan in full or make additional payments at any time without penalty.

**V. REMEDIES.** No delay or omission on part of the holder of this Note in exercising any right hereunder shall operate as a waiver of any such right or of any other right of such holder, nor shall any delay, omission or waiver on any one occasion be deemed a bar to or waiver of the same or any other right on any future occasion. The rights and remedies of the Lender shall be cumulative and may be pursued singly, successively, or together, in the sole discretion of the Lender.

**VI. EVENTS OF ACCELERATION.** The occurrence of any of the following shall constitute an "Event of Acceleration" by the Lender under this Note:

- (a) Borrower's failure to pay any part of the principal or interest as and when due under this Note; or
- (b) Borrower's becoming insolvent or not paying its debts as they become due.

**VII. ACCELERATION.** Upon the occurrence of an Event of Acceleration under this Note, and in addition to any other rights and remedies that Lender's may have, Lender shall have the right, at its sole and exclusive option, to declare this Note immediately due and payable.

**VIII. SUBORDINATION.** The Borrower's obligations under this Promissory Note are subordinated to all indebtedness, if any, of the Borrower, to any unrelated third party lender to the extent such indebtedness is outstanding on the date of this Note and such subordination is required under the loan documents providing for such indebtedness.

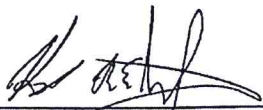
**IX. WAIVERS BY BORROWER.** All parties to this Note including the Borrower and any sureties, endorsers, and guarantors hereby waive protest, presentment, notice of dishonor, and notice of acceleration of maturity and agree to continue to remain bound for the payment of principal, interest and all other sums due under this Note notwithstanding any change or changes by way of release, surrender, exchange, modification or substitution of any security for this Note or by way of any extension or extensions of time for the payment of principal and interest; and all such parties waive all and every kind of notice of such change or changes and agree that the same may be made without notice or consent of any of them.

**X. EXPENSES.** In the event any payment under this Note is not paid when due, the Borrower agrees to pay, in addition to the principal and interest hereunder, reasonable attorneys' fees not exceeding a sum equal to the maximum usury rate of 3.99 percent (3.99 %) in the State of Illinois of the then outstanding balance owing on the Note, plus all other reasonable expenses incurred by Lender in exercising any of its rights and remedies upon default.

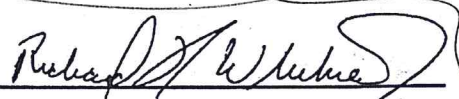
**XI. GOVERNING LAW.** This Note shall be governed by, and construed in accordance with, the laws of the State of Illinois (STATE NAME).

**XII. SUCCESSORS.** All of the foregoing is the promise of Borrower and shall bind Borrower and Borrower's successors, heirs and assigns; provided, however, that Lender may not assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the holder of this Note.

**IN WITNESS WHEREOF,** Borrower has executed this Promissory Note as of the day and year first above written.

Borrower's Signature:  Print: Kent Whitney

Lender's Signature:  Print: Igor Rubchinsky

Witness's Signature:  Print: RICHARD D. WHITNEY

Witness's Signature: \_\_\_\_\_ Print: \_\_\_\_\_